

The Commonwealth of Virginia...

Chesapeake Bay Local Assistance Department

Bay Act News



"Healthy state and local economies and a healthy Chesapeake Bay are integrally related; balanced economic development and water quality protection are not mutually exclusive." - The Bay Act



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Program Notes:

**Scott Crafton,
Acting Executive Director**

These are, indeed, "interesting" times for CBLAD. You are probably aware that the General Assembly's final budget directed the Secretary of Natural Resources to develop a plan to merge CBLAD into the Department of Conservation and

Recreation (DCR), and it also reduced our budget by \$1 million in each year of the next biennium. For more on potential agency consolidation, see "What's In Store For CBLAD?" on the next page. The budget reflects a 40 percent reduction of the agency's general funds, specifically to be taken from "Financial Assistance to Localities." These are the funds for grants to local governments, Planning District Commissions and Soil and Water Conservation Districts.

Governor Warner considered these approved actions premature, especially in view of the on-going deliberations of the Commission on Efficiency and Effectiveness, led by former Governor Douglas Wilder, and the evaluation of CBLAD's program being conducted by JLARC. He introduced his own budget amendments to defer any action on mergers or agency eliminations until after the Wilder Commission completed its evaluation of State government and submitted its report. Furthermore, the Governor's amendments proposed a fiscally sound way to restore the \$1 million to CBLAD's budget, at least for next year (first year of the next biennium).

Unfortunately, on April 17th at the Veto Session, the House defeated the Governor's amendment that would have provided initial relief for CBLAD's budget and financial grant recipients. Beginning this July 1st, CBLAD must essentially discontinue our financial assistance program for now. I assure every local official that this news was devastating to our liaison staff as well. They, in particular, know how vital these grants are in moving the program forward. It is puzzling that many of the Delegates who voted to defeat the Governor's amendment represent localities that benefit from these grants.

Fortunately, CBLAD will still be able to provide technical guidance to localities. Also, we are exploring alternative sources of funding for Bay Act grants. Furthermore, we will commit staff assistance to Tidewater localities who need it for the preparation of grant applications and their follow-through. In the meantime, I encourage you to hold the line. We can work through this unfortunate situation together.

CBLAD Activities: WHAT'S IN STORE FOR CBLAD IN 2003?

CBLAD could have a new look in 2003! Just what that “look” will be is not known at present. In 2001 the Legislature, through HJR 622, required that the Joint Legislative Audit and Review Commission (JLARC) report on the implementation of the Chesapeake Bay Preservation Act including a performance audit of local implementation and enforcement and an assessment of the resources, both personnel and financial, necessary for state and local implementation and enforcement of the Act. The JLARC report is due to the Governor and the General Assembly by October 20, 2002.

The Governor's Commission on Efficiency and Effectiveness (aka the Wilder Commission) is charged, among other matters, to recommend ways to streamline and consolidate state agencies and programs. It is anticipated that the Commission will review recommendations contained in the 1997 JLARC Report *Structure of the Natural Resources Secretariat*. The Wilder Commission's initial report and recommendations are due in August 2002 with a final report by December 15, 2002.

Meanwhile, during creation of the

Commonwealth's budget for 2002/2003, the Legislature directed the Secretary of Natural Resources to develop a plan to merge the operations of CBLAD within the Department of Conservation and Recreation (DCR) with said plan to be submitted by November 1, 2002.

These studies are parallel efforts and each may suggest outcomes quite different from the others. It may be quite a task to sort out the results and prepare appropriate legislation for the 2003 Session. While no one knows just what the “look” of CBLAD will be, presently there is no talk about substantive changes to the Chesapeake Bay Preservation Act or its Regulations that would reduce the Commonwealth's commitment to its citizens through Article XI of the Constitution or to the multi-jurisdictional Chesapeake 2000 Agreement. The goal remains to protect and enhance the waters of the Commonwealth. The task is to do so in the most organizationally effective and efficient manner. CBLAD Acting Executive Director Scott Crafton's aim is to assure that, whatever the end result, the Commonwealth will be able to continue to provide the same level, or even better, service and timely responsiveness that CBLAD currently delivers.

Staff Profiles: Martha Little



Martha Little serves as the Chief of Environmental Planning for CBLAD. She has been with the agency for two years, after moving back to Virginia from Georgia. Martha previously worked for the City of Portsmouth, Virginia enforcing the Bay Act and the Hampton Roads Planning District Commission as an Environmental Planner. She then moved to Rome, Georgia and became an Adopt-A-Stream Coordinator which led to a position with the City of Rome as Director of Environmental Planning and Historic Preservation. After that, Martha became the Planning Director for the City of Rome and Floyd County prior to returning to Virginia. Martha graduated from the University of Virginia in 1986

with a degree in Political and Social Thought. She received her Masters Degree in Urban and Environmental Planning and Historic Preservation from the University of Virginia in 1990. Martha is married with two daughters, two dogs, a cat and a hamster, she also enjoys playing tennis, gardening and painting.

Departmental Guidance and Policy: “Exceptions”

Chesapeake Bay Preservation Area Designation and Management Regulations (Regulations) cite: 9 VAC 10-20-150.C.1 through 4.

As with any set of criteria or regulations, there is often a need for relief from their strict application in cases where there may be taking of a vested right or where specific site conditions provide a unique hardship. There are other instances where a formal exception process may not be warranted, and where an administrative process is adequate for review and action. Acknowledging this, the Regulations specifically identify when administrative waivers and exemptions may be used as relief mechanisms in local programs. They also set forth when the more formal exception process, with its required findings and hearing, is required.

An exception is required when relief is sought from the local program standards and criteria that implement the requirements of 9 VAC 10-20-120 (General Performance Criteria) and 9 VAC 10-20-130 (Development Criteria for the Resource Protection Area), or any other requirement for which either a waiver or exemption process is not applicable.

A local exceptions process needs to be designed to best fit with the local plan of development review process and the location of the Chesapeake Bay regulations within the local code. A locality also needs to determine if it wants one board or commission to deal with all exceptions or to have RPA items handled by a board or commission and the general performance criteria items handled in an administrative manner.

If the local Chesapeake Bay regulations are contained within the locality's zoning code, a first consideration is whether “exceptions” should be handled by the Board of Zoning Appeals (BZA) in the same way that “variances” are. If this is the case, the BZA will need to consider the findings listed in 150.C.1. As an alternative to using the BZA, a locality may designate its governing body, its

planning commission, or establish a special board, committee or commission to carry out this function. In cases where the local Chesapeake Bay regulations are integrated throughout a locality's land use regulations, (e.g. zoning and subdivision or a unified code, or through a stand-alone program), the alternative approach would probably be best.

In considering an exception request pertaining to the Development Criteria for RPAs(10-20-130), the deciding body must hold at least one public hearing with notice to abutting property owners, must make the findings required under 150.C.1 along with any locally required findings, and may impose reasonable and appropriate conditions.

In considering an exception pertaining to the General Performance Criteria (10-20-120), the deciding body or administrator does not need to provide notice, nor hold a public hearing, but must make the findings under 150.C.1 and is empowered to impose conditions.

Exceptions to other provisions do not require hearing or notice and only require the finding that the exceptions are the minimum necessary to afford relief. Again, reasonable and appropriate conditions may be imposed.

More information about exceptions will be available through a guidance document on Exceptions to Local Chesapeake Bay Act Programs that should be released in July 2002.

For immediate inquiries contact Martha Little, Chief of Environmental Planning at: mlittle@cblad.state.va.us or call her at 1-800-CHESBAY

CBLAD Featured Article: Compliance Evaluation

“The preamble to the Chesapeake Bay Act points out that the protection of the Bay and its tributaries is to be accomplished through a cooperative state-local program. The purpose of the Compliance Evaluation process is to gauge how the local partners are implementing the program.” This comes from Lee Tyson, a Principal Planner with the Department and the staff person charged with developing the Compliance Evaluation program. The Act and Regulations provide localities flexibility in designing Bay Act programs to fit their individual local needs, while still meeting the basic requirement of the Act and Regulations. The Compliance Evaluation process is designed to review these individual programs using as objective a tool as can be developed.

Among the tools used in local implementation of the Act and Regulations are the Phase I program elements (the local Chesapeake Bay Ordinances and associated maps), the Phase II program element (the local Comprehensive Plan), and the specific implementation measures that vary from locality to locality. It is these specific implementation measures that the Compliance Evaluation policies and procedures are designed to assess.

Background

During the first several years of the program’s existence, emphasis was placed on assisting local governments in identifying and mapping Chesapeake Bay Preservation Areas, preparing local codes to implement the requirements of the Act and Regulations, and reviewing and amending local comprehensive plans for consistency with the regulatory requirements, according to Shawn Smith, a Principal Planner with the Department and the agency’s Implementation Review Officer (IRO). The Implementation Review Officer position was created in 1997 in response to House Bill 2758, which amended the Act to clarify the Board’s powers relating to compliance evaluation. (Smith has served

as the Implementation Review Officer since the position’s creation.) Smith further stated that, the Implementation Review Officer was charged by the Board with the investigation of citizen complaints on a case-by-case basis. If, in the course of the complaint investigation, it became evident that the local program was deficient in some regard, a full-scale, program-wide review was completed. The new Compliance Evaluation process is designed to give that same level of scrutiny to all 84 local governments covered by the Act. According to Smith, there have only been a handful of such program-wide investigations. The most recent was conducted at the request of the Isle of Wight County Board of Supervisors, who specifically asked for the evaluation as part of an internal review of the County’s policies and procedures related to Chesapeake Bay protection.

The Proposed Compliance Evaluation Process

The proposed Compliance Evaluation procedures are based on prior policies endorsed by the Board, the Interim Procedure developed in conjunction with the creation of the IRO position, and the recently amended Regulations. According to Tyson, “The Department wanted to use a process with which the locality liaisons and the local program contacts were familiar. Staff developed a *Compliance Evaluation Checklist* similar in scope to the Checklist for the *Evaluation of Local Program Elements* (Phase I) and the *Checklist for Evaluation of Comprehensive Plans* (Phase II). The *Checklist* will be used in conjunction with a set of field investigation reports to get a snap shot of how the local program works not only in the office, but on the ground as well.” Among the local program areas to be reviewed are the status of the CBPA Map and Ordinance regarding Phase I consistency; management efforts regarding the Land Use and Development Performance Criteria contained in 9 VAC 10-20-120; local implementation of the

Resource Protection Area criteria contained in 9 VAC 10-20-130; and, local program administration of regulatory relief and enforcement mechanisms. Staff will also conduct a series of site investigations to see how the local ordinance has been implemented in the physical environment.

A committee of local government representatives met in late January to review the proposed policies, procedures, and tools to be used in conducting the compliance evaluations. The proposed program elements were amended to address their concerns, where appropriate, and a meeting of the Board's Policy Committee was held on April 25, 2002 so that the members could give consideration to the materials. The policy committee agreed that staff should consider local government comments in revising the draft procedures. It is expected that the full Board will give consideration to the materials at its September 2002 meeting, with full implementation of the process to begin soon thereafter.

Anyone with questions about the proposed policies or procedures is encouraged to contact Lee Tyson. He can be reached at 804-371-7500 or via e-mail at: ltyson@cblad.state.va.us.

The proposed policies are available at our website:
www.cblad.state.va.us

Annual Reporting

The new Chesapeake Bay Preservation Area Designation and Management Regulations require localities to submit an annual report on their program administration and implementation efforts. While neither the format, nor the content of the annual report has been approved, the Department has begun to give consideration to this new requirement.

Recognizing that some localities are already required to submit annual reports to the Department of Environmental Quality outlining their stormwater management activities; CBLAD, the Department of Conservation and Recreation, and DEQ have met on several occasions to discuss how they might combine their annual reporting requirements so that localities can satisfy the requirements of all three agencies through a consolidated reporting form. In the Fall of 2001, CBLAD applied to the Department of Conservation and Recreation for grant funds to begin developing a coordinated annual reporting mechanism. Final funding decisions have not yet been made.

A consolidated annual reporting mechanism would not only greatly assist localities in their program administration, but would also assist the Commonwealth in meeting several of the commitments contained in the Chesapeake Bay 2000 Agreement. These commitments call for a coordinated effort at water quality protection, and a strengthening of the communication between the State and localities.

Several Hampton Roads localities are also working on developing a consolidated report format. The City of Virginia Beach and the Hampton Roads Planning District Commission Chesapeake Bay Committee have been in discussions on the issue and hope to be able to recommend a format to CBLAD in the near future.

Field Investigation - Procedures

As part of the compliance review, the liaison will conduct a series of field investigations and will complete a *Compliance Checklist Field Investigation Report* for each development site visited. Liaisons will develop a list of sites to be visited based on their knowledge of local conditions and issues and are to include this information in their workplan. Sites of complaints, or known violations should be inspected. Sites that have been the subject of on-going communication between the locality and the liaison should also be visited. Other sites that may warrant inspection are those that have been developed under site plans reviewed as grant deliverables. Localities are encouraged to include sites about which they have particular questions or on which particularly innovative measures were used in addressing the Act and the Regulations. In addition to the sites identified above, liaisons will also visit randomly selected sites, based on their knowledge of local conditions and issues. After the sites have been identified, the liaison and the local program contact will complete the *Compliance Field Investigation Report*. Digital photographs of the site are to be taken and included in the locality files.

Board Meeting Highlights

The Chesapeake Local Assistance Board held its first quarter meeting on Monday, March 18, 2002. Six localities (Stafford, Gloucester, and Middlesex counties, the cities of Hopewell and Poquoson and the Town of Tappahannock) were found consistent with Phase II requirements (comprehensive plan). Each fulfilled previously imposed conditions. There are now 64 localities that are fully Phase II consistent with another 17 that are consistent with conditions. James City County was found inconsistent for failing to adopt amendments to its comprehensive plan to meet previous conditions.

Due to changes in local programs or previous consistency conditions, a Phase I (mapping and performance standards) review for Northumberland County and Stafford County resulted in both programs being found consistent with Phase I requirements.

Margie Reynolds, Grants Program Manager, reported a 100% increase in the number of competitive grant requests for FY03, seeking \$936,000. With only \$572,000 proposed in the FY03 budget, the Board Grants Committee recommended funding 24 grants. This financial assistance would have funded 10 local staff people, spending all of their time on the grant projects, and an additional 20 people working part time on those projects. However with the budget cut imposed by the General Assembly upon the local assistance funds (see page 1 article), only two competitive grants will be funded.

The Board also received an update from JLARC on its study of the CBLAD program and a presentation by Lee Tyson on the proposed Compliance Review Program

Bay Program Update

The Land Growth and Stewardship Subcommittee (LGSS) received a document entitled "Report from the States" which identified the progress being made by Virginia, Pennsylvania, Maryland, and the District of Columbia in addressing Section 4.2 of the C2K commitments dealing with Development, Redevelopment and Revitalization.

A general observation was that each jurisdiction has, to varying degrees, programs in place that address these commitments. However, each has a significantly different approach reflecting differences in statutory powers, character of development, and governing philosophies. This observation reinforces the common rule that in undertakings, such as addressing the C2K 4.2 commitments, "one size does not fit all".

More information about the "Report from the States" can be obtained by contacting CBLAD's Policy Planner, David Kovacs.

Technical Assistance Survey Results

The results of the Local Program Survey
33 of 84 localities responded : **39%**

Respondents believing they would be better served if CBLAD were merged into a larger State Agency: **9%**

Respondants believing they would be better served if CBLAD remains an independent Agency: **67%**

Top 5 Technical Assistance Needs:

1. Comprehensive Plans
2. Buffer Modification: Sight Lines, Paths & Woodlot Management
3. Exceptions
4. Redevelopment & IDAs
5. Buffer Restoration

For more information on the Survey Results, contact Dennis Cooke at:

dcooke@cblad.state.va.us

or call him at:

1-800 CHES-BAY

*Meeting announcements,
upcoming events and more
great information available
on our website!*

www.cblad.state.va.us

Locality Focus: Williamsburg

In 1989, the City of Williamsburg adopted a Chesapeake Bay Preservation Area Ordinance to comply with the State's 1988 Chesapeake Bay Preservation Act. Through their progressive stance on Bay Act issues and the development of innovative policies and procedures, the City has used the Bay Act as a tool for not only protecting the water quality of the Bay and its tributaries, but also for maintaining a high quality of life for its citizens.

The City has long required that all new subdivisions maintain the minimum 100-foot RPA buffer. This requirement fits in well with protecting the sensitive environmental areas identified in the City's Comprehensive Plan, and has been a useful tool for evaluating new subdivision plans. This is aided by the fact that most of the RPA areas are located in ravines on stream banks with steeply sloping topography. The City does not use the 100-foot buffer as a "setback" line, but as a true limit of disturbance by ensuring that there is sufficient area outside of the RPA to allow the construction of the house and maintain a rear yard without encroaching into the buffer area. Maintaining the full 100-foot RPA buffer has also provided the City with a successful method of controlling erosion and reducing property damage caused by flooding. Construction on lots that were created prior to the Bay Act often involved significant encroachment into the buffer area. The reduced buffer widths on these lots combined with the steeply sloping topography of the City have produced a multitude of erosion and drainage problems. The City and landowners have spent a great deal of time and money attempting to correct the problems of these pre-Bay Act lots. The City has encountered far fewer problems of these types on lots that retain the full 100-foot RPA buffer.

Stormwater management has also been an important part of the City's environmental program. A comprehensive Stormwater Management study, plan, and ordinance were prepared and adopted by the City in 1996. Two major innovations that resulted from this comprehensive study were the development of regional stormwater management facilities and the creation of a Regional Reserve

Open Space Program. Having regional stormwater management facilities allows developers to buy water quality credits instead of building individual on-site facilities, and will result in reduced land disturbance and increased retention of existing vegetation on development sites. Since the City will own the regional stormwater management facilities, their proper maintenance will be assured over time.

The Regional Reserve Open Space Program was developed to allow the City to purchase open space that would have been developed, in order to offset the impervious surface created by new developments. It functions essentially like a non-structural stormwater management facility, and can only be applied to properties in the same watershed. Recorded restrictive covenants are required for the land to be considered Reserve Open Space. The City has established two Reserve Open Space Areas – one 105-acre site which was planned to be the last 100-lot section of a single family development, and one 37 acre site that was part of a land exchange with the College of William and Mary and which is planned to be developed as a passive park in the future.

Chesapeake Bay facts for: City of Williamsburg:

Land area: 9 square miles

Land in Chesapeake Bay Preservation Area: 60%

Population (2000): 11,998

Character: Small City, Mostly Developed

Local program contact:
Carolyn Murphy, (757) 220-6132
cmurphy@ci.williamsburg.va.us

CBLAD Liaison:
Doug Wetmore, (804) 371-6221,
dwetmore@cblad.state.va.us

PDC: Hampton Roads Planning District Commission

Contact Information

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The Honorable L. Clifford Schroeder,
Richmond Regional Planning District

Vice Chairman

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The Honorable Anna Lee Bamforth,
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